

## **REMARKS**

Applicants request that claims 4 and 7-8 be canceled without prejudice. Applicants reserve the right to pursue any additional subject matter covered by the previously pending claims in one or more continuation or divisional applications. Applicants have amended the specification and claims 3 and 19. Therefore, claims 1-3, 5-6, and 9-26 are currently pending, subject to the Examiner entering Applicants' Amendment. The amendments to the claims do not constitute the addition of new matter. Support for the changes to the claims may be found in the specification, drawings and claims as originally filed. The changes made to the claims by the current amendment are attached hereto in a document entitled "Specification and Claim Amendments Markup." Entry of the amendments is respectfully requested.

## **Objection to the Drawings**

Applicants appreciate the Examiner noting the missing reference number "120" in Figures 4-6. The Applicants have submitted drawing corrections for the Examiner's approval. Corrected Figures 4-6 are attached to this response. Upon such approval and receipt of a Notice of Allowance, the Applicants will submit formal drawings to the Official Draftsman for review.

## **Declaration of David C. Lyons**

Applicants have submitted the Declaration of David C. Lyons ("Lyons Declaration") in support of this office action response. The Lyons Declaration establishes that Applicants are unaware of any other prior work at Hearth Technologies, Inc., or otherwise, or any other prior disclosures related to compression molding of materials for use in gas fireplace systems, other than the inventions disclosed in Applicants' present patent application (Serial No. 09/781,149).

## **Objection to the Specification**

Applicants appreciate the Examiner noting that the first and second occurrences of the numeral "150" on page 10 should be changed to "136" and "120" respectively. Applicants have corrected the specification to represent these changes.

### **Rejections under 35 U.S.C. § 102(b)**

#### **Rejections Under Bleach**

The Examiner rejected claims 1-2 under § 102(b) as being anticipated by U.K. Patent Application No. 2179438A issued to Bleach (the Bleach patent). Applicants respectfully traverse these rejections.

Claim 1 of the present invention requires that "the burner panel comprise a compression molded material." Bleach does not disclose a burner panel comprised of a compression-molded material. Thus, Bleach does not contain every element of the claimed invention and therefore cannot anticipate claim 1 under § 102. Because claim 2 depends on independent allowable claim 1, claim 2 is also allowable. Applicants respectfully request the withdrawal of the rejections to claims 1-2.

#### **Rejections Under The '743 Patent**

The Examiner rejected claims 1-6, 9 and 19-22 under §102(b) as being anticipated by U.S. Patent No. 6,006,743 issued to Shimek et al. (the '743 patent). Applicants respectfully traverse these rejections.

Claims 1 and 21 require that the burner panel comprise a compression-molded material. The '743 patent does not disclose a burner panel comprising a compression-molded material. Therefore the '743 patent cannot anticipate claims 1, 21 or the claims that depend from them.

Claim 3 requires that the burner panel be a monolithic and molded to form at least one preformed log wherein the at least one performed log defines at least a portion of the cavity. The '743 patent does not disclose a monolithic shape molded to resemble a log and does not disclose that at least one of the preformed logs defines at least a portion of the cavity. Thus, the '743 patent does not anticipate claim 3 of the present invention because it does not contain every element of that reference.

Claim 19 requires a burner panel defining a top surface and a bottom surface. The top surface of the burner panel has a raised upper portion and a lower portion wherein the raised upper portion of the top surface extends above the lower portion of the top surface. The bottom surface of the burner panel defines at least one cavity wherein a portion of that cavity is defined

by the bottom surface of the raised upper portion of the burner panel. Thus, the cavity formed by bottom surface extends above the lower portion of the top surface.

In contrast, the '743 patent lacks a raised upper portion and a lower portion of the top surface of the burner panel. The '743 patent discloses a chamber defined by the bottom surface of a burner panel. The top surface, though slightly three-dimensional, only has one portion or level; it does not have a lower portion relative to an upper portion. Additionally, the '743 patent does not disclose that at least a portion of the cavity is defined by the bottom surface of the upper portion wherein a portion of the cavity extends above the lower portion of the upper surface of the burner panel. Because the '743 patent does not disclose every element of claim 19, it does not anticipate it under §102.

Claims 2-6, 9, 20 and 22 are dependent upon independent and allowable claims 1, 3, 19 and 21. Therefore, claims 2-6, 9, 20 and 22 are also allowable. Applicants respectfully request the withdrawal of the rejections to claims 1-6, 9 and 19-22.

#### Rejections Under The '237 Patent

The Examiner rejected claim 26 under §102(b) as being anticipated by U.S. Patent No. 5,941,237 issued to Shimek (the '237 patent). Applicants respectfully traverse this rejection.

Claim 26 requires that the burner panel comprise a compression-molded material. The '237 patent does not disclose a burner panel comprised of a compression molded material and therefore does not anticipate claim 26.

Therefore, claim 26 is allowable and withdrawal of the Examiner's rejection is respectfully requested.

#### Rejections under 35 U.S.C. § 103(a)

##### The '743 Patent and Arribas

The Examiner rejected claims 7-8 and 23-25 under 35 U.S.C. §103(a) as being unpatentable over the '743 patent in view of France Patent No. 2,629,178 issued to Arribas (the Arribas patent). Applicants have cancelled claims 7-8. Applicants respectfully traverse the rejections with respect to claims 23-25.

Claims 23-25 depend from independent claim 21, which includes a compression-molded burner panel. Neither the '743 patent nor Arribas disclose, teach, or suggest a compression-molded burner panel and therefore it would not have been obvious from these references to make the burner panel from a compression-molded material. Thus, claims 23-25, which depend from independent and allowable claim 21 are not obvious in light of the '743 patent and Arribas.

Applicants respectfully request that the Examiner withdraw his rejection of claims 23-25.

The '743 Patent and Hussong

The Examiner rejected claims 10-18 under 35 U.S.C. §103(a) as being unpatentable under the '743 patent in view of U.S. patent No. 5,931,154 issued to Hussong et al. (the Hussong patent). Applicants respectfully traverse this rejection.

Claims 11-18 depend from independent and allowable claim 10. Neither the '743 patent nor Hussong disclose, teach, or suggest a compression-molded burner panel, which is included in Applicants' independent claim 10, and therefore it would not have been obvious from these references to make the burner panel from a compression molded material. Thus, claims 10-18 are not obvious in light of the '743 patent and Hussong and withdrawal of the Examiner's rejections is respectfully requested.

Conclusion

In light of the foregoing amendments and remarks, Applicants submit that the pending claims 1-3, 5-6 and 9-26 are in condition for allowance and withdrawal of the Examiner's rejections is requested. Notification of such allowance is respectfully requested. Applicants also note that there may be additional reasons that the pending claims are patentably distinct from the cited references and reserve the right to raise any related arguments in the future.

The Examiner is encourage to contact Applicants' undersigned attorney, at the below listed telephone number, to discuss this matter if any questions arise upon further examination of the pending claims.

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	LYONS ET AL.	Examiner:	YEUNG, JAMES
Serial No.:	09/781,149	Group Art Unit:	3743
Filed:	FEBRUARY 8, 2001	Docket No.:	12929.1062US01
Title:	MONOLITHIC PANEL FOR A GAS BURNER		

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SPECIFICATION AND CLAIM AMENDMENTS--MARKUPIn the Specification

Paragraph beginning at page 10, line 4 has been amended as follows:

Referring to Figures 5 and 6, the burner panel 110 is shown coupled to the back panel 124 and two side panels 126 and 127 of a combustion chamber enclosure 120. An outer enclosure 136 [150] surrounds the combustion chamber enclosure 120 [150]. The outer enclosure 136 and combustion chamber enclosure 120 can define a passageway 150 within the fireplace unit 122. The burner panel 110 can be form-fit, mechanically, or adhesively coupled to the back panel 124 and at least one side panel 126. The burner panel 110 can be mechanically attached with, for example, screws, bolts, brackets, or any other suitable attachment device, known to those skilled in the art.

In the Claims

Claims 4 and 7-8 have been cancelled.

Claims 3 and 19 have been amended as follows:

3. (Once Amended) A gas burner for a fireplace, comprising:

a burner panel defining a top surface and a bottom surface, wherein the burner panel is molded to form at least one preformed log;

a bottom burner member coupled to the burner panel;  
wherein the burner panel defines at least one aperture to provide a gas/air mixture to the top surface of the burner panel;

wherein the bottom surface of the burner panel defines at least one cavity;

wherein the at least one performed log defines at least a portion of the at least one cavity; and

wherein the at least one cavity extends above at least a portion of the top surface of the burner panel.

19. (Once Amended) A gas burner for a fireplace, comprising:

a burner panel defining a top surface and a bottom surface, wherein the top surface has a raised upper portion and a lower portion;

a bottom burner member coupled to the burner panel;

wherein the burner panel defines at least one aperture to provide a gas/air mixture to the top surface of the burner panel;

wherein the bottom surface of the burner panel defines at least one cavity;

wherein the at least one cavity extends above the lower portion of the top surface of the burner panel; and

wherein the raised upper portion of the top surface, extends above the  
lower portion.

